IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10312 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASHIBEN WIDOW OF NAGINBHAI MANCHHUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passed an order on September 12, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Kashiben, widown of Naginbhai Manchhubhai of Surat under the provisions of the said Act.

2. The detaining authority considered seven offences registered against the detenu. The authority also

considered statements of three anonymous witnesses in respect of incidents dated April 22, 1999, May 19, 1999 and June, 15, 1999. The detaining authority exercised powers under Section 9(2) of the PASA Act of claiming privilege of not disclosing identity of the witnesses in public interest and, ultimately, came to a conclusion that the detenu is a bootlegger and her activities are required to be prevented as they are found to be detrimental to public order. The authority also observed that it is not possible to resort to less drastic remedies.

3. The detenu, by this petition, challenges the order of detention on various counts. However, Ms. Patel, learned advocate appearing for learned advocate Mr. U.M. Panchal for the petitioner, has restricted her arguments on the ground of delay in forwarding the representation by the detaining authority. She submitted that a representation was made on behalf of the detenu on September 18, 1999. The said communication was received by the detaining authority on September 20, 1999 and the detaining authority forwarded the same to the State Government on September 23, 1999. She submitted that September 20, 1999 was a Monday and September 21st, 22nd and 23rd were also working days. As such, the detaining authority was required to forward the representation as the detention order was already approved on September 15, 1999 by the Government. This lapse of three days in forwarding the representation has resulted into denial of right of making an effective representation. The continued detention would, therefore, be rendered illegal and on that ground, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He does not dispute the factual part of the date of representation, receipt of representation and forwarding of representation by the detaining authority.

5. Considering rival side contentions, it appears that the detaining authority was conscious of the fact that it has not to consider the representation on merits as the order of detention was already approved by the State Government and it was only required to forward the same. For forwarding the representation, the detaining authority has consumed three days, which has remained unexplained, as no affidavit in reply is filed by the detaining authority. This delay in forwarding the representation has infringed the right of the detenu of making an effective representation and can be said to be sufficient to vitiate continued detention. In this

regard, decision in the case of Harish Pahwa v. State of U.P., A.I.R. 1981 SC 1126 can be profitably be considered. In view of this legal position, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 12, 1999, passed against the detenu is hereby quashed. The detenu-Kashiben, widow of Naginbhai Manchhubhai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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